



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 27.09.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVA

Crl.O.P.(MD)No.2114 of 2021

and

Crl.MP(MD)No.1029 of 2021

WEB COPY

Jothimani ... Petitioners/Accused No.4

Vs.

1.State,
through the Sub Inspector of Police,
E.O.W.II,
Virudhunagar District. ... Respondent/Complainant

2.S.Somasundaram
3.P.Gurusmy
4.P.Sankaravel ... Respondents

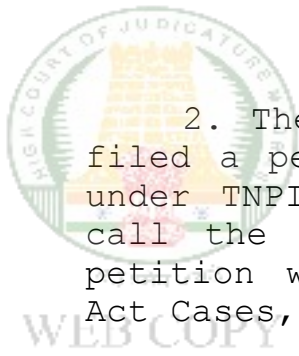
(R2 to R4 impleaded as per order of this Court dated 20.09.2021 in Crl.MP(MD)No.1337 of 2021 in Crl.OP(MD)No.2114 of 2021 by GIJ)

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to dismissal order in Crl.MP.No.1659 of 2020 in C.C.No.4 of 2017, dated 29.01.2021, on the file of the learned Special Judge under TNPID Act Cases, Madurai and set aside the same and permit the petitioner to recall P.W.1 to P.W.32 for the purpose of cross examination, which is pending before the Special Judge under TNPID Act Cases, Madurai District.

For Petitioner : Mr.A.S.Vaigunth
For R1 : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor
For R2 to R4 : Mr.V.Angusamy

ORDER

This Criminal Original Petition is filed to set aside the dismissal order passed in Crl.MP.No.1659 of 2020 in C.C.No.4 of 20-17, dated 29.01.2021, on the file of the learned Special Judge under TNPID Act Cases, Madurai and permit the petitioner to recall P.W.1 to P.W.32 for the purpose of cross examination, which is pending before the learned Special Judge under TNPID Act Cases, Madurai District.



2. The case of the prosecution is that the petitioner herein filed a petition before the learned Special Judge, Special Court under TNPID Act Cases, Madurai, under Section 311 Cr.P.C to recall the witnesses P.W.1 to P.W.32 for cross-examination. That petition was dismissed by the learned Special Judge under TNPID Act Cases, Madurai, dated 29.01.2021.

3. Seeking quashment of the above said dismissal order, this petition has been filed mainly on the ground that new counsel was appeared for the petitioner.

4. Heard both sides.

5. The Trial Court after going through the records found that most of the witnesses are very aged, old and sick. So, cannot harass them by re-calling, after a lapse of one year. It is also been noted that totally 44 witnesses have been examined and those witnesses were also not cross-examined by the petitioner. But, it appears that P.W.1 to P.W.21 were declared as hostile witnesses and necessity of re-calling those witnesses are not raised by the petitioner.

6. It is further seen that Criminal Original Petition, filed by the co-accused before this Court, in Crl.OP(MD)No.7831 of 2021, was allowed by the order, dated 23.06.2021.

7. According to the learned counsel for the petitioner, because of the pendency of the civil suit in O.S.No.6 of 2019, he was not in a position to cross-examine the witnesses, on the date of chief examination since he was not in a position to get proper instruction. Even though the reason mentioned by the petitioner for not cross-examined the witnesses may not be proper, the facts remains that without cross examining the material witness, it may not be proper for the Trial Court to render justice on merits. The purpose of cross examination have been elaborately discussed by the Hon'ble Supreme Court in the case of **Kartar Singh Vs State of Punjab reported in (1994) 3 SCC 569**, the points, which have been decided by the Hon'ble Supreme Court is extracted hereunder:-

"Section 137 of the Evidence Act defines what cross-examination means and Sections 139 and 145 speak of the mode of cross-examination with reference to the documents as well as oral evidence. It is the jurisprudence of law that cross-examination is an acid-test of the truthfulness of the statement made by a witness on oath in examination-in-chief, the objects of which are:

(1) to destroy or weaken the evidentiary value of the witness of his adversary;



(2) to elicit facts in favour of the cross-examining lawyer's client from the mouth of the witness of the adversary party;

(3) to show that the witness is unworthy of belief by impeaching the credit of the said witness:

and the questions to be addressed in the course of cross-examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring his character."

8. So, this position is also been pressed in the case of **Jayendra Vishnu Thakur Vs.State of Maharashtra** reported in (2009) 7 SCC 104 in the following words:-

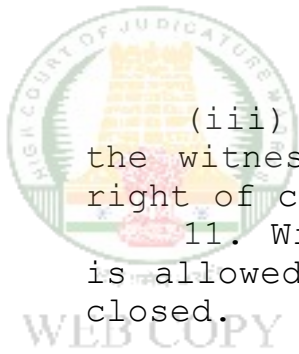
"A right to cross-examine a witness, a part from being a natural right is a statutory right. Section 137 of the Evidence Act provides for examination-in-chief, cross-examination and re-examination. Section 138 of the Evidence Act confers a right on the adverse party to cross-examine a witness who had been examined in chief, subject of course to expression of his desire to the said effect. But, indisputably such an opportunity is to be granted. An accused has not only a valuable right to represent himself, he has also the right to be informed thereabout. If an exception is to be carved out, the statute must say so expressly or the same must be capable of being inferred by necessary implication. There are statutes like the Extradition Act, 1962 which excludes taking of evidence vis-a-vis opinion."

9. A mere reading of the above observation, the Hon'ble Supreme Court shows that cross examination is the base of fair trial. Even though, the petitioner and his counsel failed at times, he should not be penalised at the cost of fair trial. Witnesses can be compensate by awarding cost. But, the damage caused to the accused person due to non-cross-examination of the material witnesses, can not be compensated.

10. So, on this sole ground, I am of the considered view that this petition is liable to be allowed. The order passed by the learned Special Judge under TNPID Act Cases, Madurai, in Cr.MP.No.1659 of 2020 in C.C.No.4 of 2017, is quashed with the following conditions:-

(i) The petitioner must deposit Rs.1000/- (Rupees One Thousand Only) as cost to the each witness before the Trial Court within 15 days from the date of resumption of normal work.

(ii) The Trial Court may fix a date for cross examination of the witnesses and shall send summons to the witnesses.



(iii) On the date fixed, the petitioners must cross examine the witnesses without fail. If any failure is noticed, then the right of cross examination of the witnesses will be lost.

11. With the above direction, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Special Judge under TNPID Act Cases,
Madurai.
- 2.The Sub Inspector of Police,
E.O.W.II,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.2114 of 2021

and

Crl.MP(MD)No.1029 of 2021

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RK (29/10/2021) 4P 4C